THE GRADUAL TRIUMPH OF LAW OVER BRUTE FORCE.

A Historic Retrospect.

BY

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THE GRADUAL TRIUMPH OF LAW OVER BRUTE FORCE.

"War," said the greatest of modern warriors, "is the trade of barbarians." But can no remedy be found for the evil? Cannot civilised and Christian nations be brought to adopt some other means of settling their differences, than this system of hideous waste and wholesale massacre? Is there anything inherently absurd in the belief, and in the practical efforts to which such belief, if it be in earnest, must give rise, that the great organised communities which now inhabit Europe may be brought to recognise the jurisdiction of a common law, and to seek adjustment for their disputes by a system of judicial reference, in lieu of their present appeal to the arbitration of brute force? We have a very strong conviction that this hope and aim, so far from being absurd, are in perfect harmony with the progressive and predominant tendencies of civilisation. We believe that the history of the past points to this consummation as not only possible, but certain; and, if it be so, then those who labour for its attainment, so far from deserving to be branded as impracticable Utopists, are only moving in a line with the

inevitable laws of Providence. It is our intention to attempt to prove this by the light of historical experience and general laws of civilisation.

Our position is this,—that through all the conflict and confusion of the past there may be traced a powerful and prevailing tendency on the part of mankind to unite and mass themselves in larger social aggregates, under protection of a common policy, based on submission to the authority of a common law. Under the influence of this tendency, customs and practices once generally in vogue have disappeared from civilised society. And first we note the

JUDICIAL COMBAT.

The first rude impulse of men, when brought into any sort of social relation with their fellow-men, was for each individual to defend his own rights and to avenge his own wrongs, by sheer brute strength. And it is surprising how long this impulse lasted, and how difficult it was to induce men to surrender their right of personal retaliation, for the far higher and better security of law. In all ages, legislators, in order gradually to bring under control this barbarous propensity, have had for a time to enter into some sort of compromise with it. Such was the case with Moses, in regard to the "Goël," or Avenger of Blood, a custom which he found so deeply rooted in the habits of his people that he durst not at once abolish it, but was obliged "for the hardness of their hearts," to be content with

modifying and regulating it, which he did by the institution of the Cities of Refuge. In the account given to us by the Roman writers of the ancient Germans, we are told that they circumscribed the jurisdiction of the magistrates within very narrow limits, and not only claimed but exercised almost all the rights of private resentment and revenge. And when these tribes became, in process of time, Christianised after a fashion, they clung tenaciously to the habit of disposing of their private quarrels by the law of arms. It was, no doubt, as a compromise with this custom, that the institution of Judicial Combat, or trial by battle, was introduced among them, and afterwards spread throughout Europe. This, indeed, is expressly stated in one of the laws of Luitprand, an ancient king of the Lombards, in the eighth century, who condemns such a method of procedure as impious, though from the hold it had on the minds of the people, he could not prohibit it.* Now, as war between nations is really nothing but this custom of judicial combat on a larger scale, and is not one whit more rational or Christian when followed by communities than by individuals, it may help to open our eyes, blinded as they are by familiarity with the evil, to the extreme absurdity of the practice if we look at it for a moment as it prevailed among our ancestors in their personal relations with each other. The

* "Incerti sumus de judicio Dei et quosdam audivimus per pugnam sine justa causa suam causam perdere. *Sed propter consuetudinem gentis nostræ Longobardorum legem impiam vetare non possumus.*"

language in which Montesquieu describes the latter is just as pertinently applicable to the former, could we only regard it apart from the prejudices of education. "We shall be astonished," he says, "to see that our fathers made the fortune, honour, and life of citizens to depend upon things which were less an appeal to reason than to chance; that they constantly employed proofs which proved nothing, and had no relation to either innocence or guilt." *

From various authors who have treated on the subject we learn many remarkable particulars of this strange process of justice; for, in fact, it had all the form and solemnity of a process of justice. As the writer we have just quoted remarks, "It will be curious to see how this monstrous usage was reduced to a system, and had a singular code of jurisprudence. Men place under rules even their prejudices. Nothing could have been more contrary to common sense than the judicial combat; but, the principle being once admitted, it must be conducted with a certain prudence." † The same remark applies precisely to the jumble of strange anomalies called "laws of war."

But to proceed with our description of the trial by battle. The two litigants presented themselves in court. The accuser began by declaring, before the judge, that his opponent had committed such a crime or outrage. The accused replied by giving him the lie, on which the judge ordered the battle.

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* "L'Esprit des Lois," Liv. xxviii., c. 17.

† *Ibid.*, c. 23.

The field for the fight was selected with care, often in the neighbourhood of a church; and every arrangement was made, in settling the lists and manner of combat, to insure fairness and impartiality. Before appearing on the ground, the combatants attended the celebration of mass, the form for which occasions is still to be found in certain old missals, where it is called *missa pro duello*. On the ground chosen for the conflict, a fire was kindled, and a gallows erected for the vanquished. Both parties had to take the following oath :—

"Hear this, ye justices, that I have this day neither eat, drank, nor have upon me either bone, stone, or grass, nor any enchantment, sorcery, or witchcraft, whereby the law of God may be abased, or the law of the devil exalted. So help me God and His saints."

Gentlemen fought on horseback, and with arms, but the common people on foot, with bludgeons. The combatants were bound to fight till the stars appeared. Women, and the clergy, and infirm persons, were allowed to appear by proxy, their representatives being called *champions*, and a body of regular bravoes grew up, who hired themselves for the purpose. The champion, if he failed, was liable to have his right hand cut off; while his principal, in criminal cases, having been beaten by proxy, was forthwith hanged in person.

The judicial combat was introduced into England by William the Conqueror, and was used in the court martial, in appeals of felony, and in civil cases upon issue joined in a writ of right. It was conducted with peculiar formality, in the

presence of the judges in their scarlet robes, who presided over the field, which was duly set out of sixty feet square, and enclosed by lists. It appears that trials of this kind were so frequent, that fines paid on these occasions made no inconsiderable branch of the King's revenue. For some time after the Conquest, the only mode of trying a writ of right, for the determination of right to real property, was this barbarous proceeding; but Henry II. introduced the *grand assize*, which, however, at first only gave the party against whom the action was brought a choice as to whether his case should be tried by jury or by wager of battle. The last trial by battle awarded in England was in the case of Lord Reay and Mr. Ramsay, in the 7th of Charles I.; but the King, after having appointed a constable to preside, revoked the commission.* But the law empowering this appeal remained on the statute-book of England until the year 1818. What led to its repeal was the following circumstance:—William Ashford, having brought an appeal against Abraham Thornton for the murder of his sister, the latter pleaded as follows—"Not guilty; and I am ready to defend the same with my body;" and thereupon, taking off his glove, he threw it upon the floor of the Court. Judgment was stayed in consequence of a legal difficulty which arose in the case; and in the following year an Act was passed by which ap-

* There is in Shakespeare's "Richard II." a very animated representation of the preparations for such a combat, between Bolingbroke, Duke of Hereford, and Mowbray, Duke of Norfolk.

peals of treason, felony, and other offences, and trials of battle by writs of right were abolished. The Attorney-General, in introducing a bill for this purpose, remarked that, "if the party had persevered, he had no doubt the Legislature would have felt it their duty to interfere and pass an *ex post facto law to prevent so degrading a spectacle from taking place.*"*

A writer in the "Encyclopædia Metropolitana," referring to the custom we have been describing, says:—"This absurd and cruel appeal from doubtful right to superior prowess and strength, which oppressed the weak who most needed protection, and favoured the brutal insolence and triumph of force, was long the stain and reproach of the Gothic communities. It little mended the evil that the peaceful and the feeble, ecclesiastics, women, and aged and inferior persons were permitted to entrust the safety of their lives, or the assertion of their rights, to the uncertain superiority or questionable faith of a friendly, or more frequently a mercenary, champion. The sanctuary of justice was, at least, wantonly defiled with blood; and human life must have been perpetually sacrificed in the unsuccessful cause of innocence and right." Few persons will be disposed now to question the justice or to deprecate the strength

* *Vide* Montesquieu, "Esprit des Lois;" Robertson's "History of Charles V." note 6; Brande's "Dictionary of Science;" "Anti-Duel," by John Dunlop, pp. 8, 9; Gibbon's "History," c. 38; and especially a most able and learned note to Mr. Charles Sumner's Oration on "The True Grandeur of Nations," pp. 83, 84.

of this language. But we entreat our readers to observe two or three things. First, that every line, every syllable of that language, is as emphatically applicable to the "duel of nations," called war. There is the same substitution of might for right, the same oppression of the weak by the insolent predominance of brute force, the same bootless sacrifice of life without any approach to a just or satisfactory decision of the questions at issue. Secondly, that, monstrous as the practice was, mankind clung to it with a desperate tenacity for ages, as they cling now to war, as if it were utterly impossible for society to exist without it, and as if life, property, and honour were altogether dependent on its continuance. And thirdly, that notwithstanding the strong rampart of prejudice behind which the custom had entrenched itself it has been long utterly abolished in favour of an appeal to legal trial and judgment—with what infinite advantage as respects the interests of justice and the sense of security, both to individuals and to society at large, it is superfluous to state.

But the abolition involved a struggle of many centuries. It would appear that the clergy frequently protested against the practice and strenuously sought its abrogation. Thus we are told that when it was introduced into Gaul by the Burgundians the Archbishop Avitus uttered "complaints and objections" to the King. Three centuries later we find Agobard, Bishop of Lyons soliciting the King of France to repeal the law which recognised it. "It often happens," he says,

"that not only strong men, but those that are infirm and old, are dragged to the combat, even for the vilest causes. By which deadly conflicts many unjust homicides are committed, and perverse and cruel issues of judgment."

Thus, as Mr. Sumner says, "by the voices of pious bishops, by the anathemas of popes, the Church condemned whomsoever should slay another in a battle so impious and inimical to Christian peace as 'a most wicked homicide and bloody robber,' while it regarded the unhappy victim as a volunteer guilty of his own death, and therefore decreed his remains to an unhonoured burial, without psalm or prayer."

The severest blow dealt to this barbarous custom was by "that incomparable prince," as Mr. Hallam designates him, Louis IX., usually called—and if ever mortal prince merited the title, justly called—*Saint* Louis. His was, indeed, an eminently beautiful character, which meets one amidst the dreary waste of that half-savage time with a pleasant surprise, such as the traveller feels when he comes upon some green spot in a wilderness of rocks and sand. His Christian conscience was shocked alike by the folly and the brutality of the judicial combat, and he determined to do what in him lay to bring it to an end.* But it is a

* "The judicial duel and private wars were not, in his view, consistent with a regular and Christian society; they were manifestly relics of the ancient barbarism, of that state of individual independence and warfare which has been so habitually designated the state of nature. Now, the reason and the virtue of St. Louis both revolted against this con-

striking proof of the inveteracy with which the evil was imbedded in the habits of that age, that he durst do no more than abolish it in his own domains. "The possessors of fiefs," says Guizot, "great and small, adhered to it tenaciously, as to a custom, a right. The attempt to interdict it at once throughout the kingdom was impracticable. The great barons would instantly have denied the right of the king thus to change the institutions and practices in their domains." He could, therefore, only discourage it by the example of a wiser jurisprudence where his own authority was supreme. Accordingly his ordinance on the subject ran thus:—

"We prohibit all private battles throughout our dominions. Whatever right of claim and answer thereto, whatever peaceful modes of settling disputes have been in force hitherto we fully continue; but battles we forbid. Instead of them we enjoin proof by witnesses, and, further, whatever other just and peaceful proofs have been heretofore admitted in courts secular. . . . And these battles we prohibit in our domains for all time to come." *

By degrees courts of law came to be established, and judges, as a distinct and honoured class, to be recognised. "As gentler manners prevailed," says Hallam, "especially among those who did not make arms their profession, the wisdom and

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dition of things, and in combating it his sole idea was the suppression of disorder, the institution of peace for war; of justice for brute force; of society, in a word, for barbarism." —*Guizot.*

* Guizot's "History of Civilisation," vol. ii., sec. 14.

equity of the new code was naturally preferred. The superstition which had originally led to the judicial combat, lost its weight through experience and the uniform opposition of the clergy."* The law of violence struggled long and hard ere it was driven back by the advancing light of intelligence and civilisation, and some remnants of the barbarous institution in which it was embodied continued to linger among us, as we have seen, until comparatively modern times. But now, in the relations of individuals in civil society, the triumph of law over brute force has been complete.†

Thus, the history of the Judicial Combat, or Trial by Battle, and the manner in which it was supplanted by the jurisdiction of the magistrate, is the first proof we adduce of our position, that there may be traced throughout the ages a powerful and prevailing tendency on the part of mankind to unite in larger social aggregates, under protection of a common polity, based on submission to the authority of a common law. We propose now to illustrate this same truth by showing how another institution or usage, or whatever it may be called, which, for a long period, held tyrannical sway over thousands of men in all the most important countries of Europe, has by degrees yielded to the same tendency, and has utterly dis-

* Hallam's "Middle Ages," vol. i., pp. 245-6.

† The only lingering remnant of this ancient practice is the custom of duelling, which still prevails to some extent in Continental countries, but has happily quite disappeared from our own.

appeared from among the customs of every civilised nation.

PRIVATE WAR.

For many centuries in Europe, the practice of private war—that is, war on their own account, by members of the same State, or those who professed to recognise the authority of the same sovereign—was as common and as distinctly acknowledged as a *right*, as public war, or war between nations is in our own day. In France, in Spain, in Germany, and, in a somewhat modified form, in England, this custom prevailed more or less until about the fifteenth century. Every man who aspired to the name of a leader, and who could persuade a number of men to own his authority, claimed and exercised the right of appeal to what is *now* called the *ultima ratio regum*, against any of his neighbours who might have committed, or whom he might have found it convenient to charge with committing, wrong or trespass upon his person or property, or those of his kindred or dependents. This privilege was, however, nominally restricted to persons of noble birth. All disputes between slaves (*villani*), the inhabitants of towns, and freemen of inferior condition, were decided in the Courts of Justice. But such submission to law was deemed inconsistent with the dignity of men of rank, as there are persons who now think it would be inconsistent with the dignity of a sovereign State. Even the higher order of ecclesiastics asserted their right to pro-

secute war on their own account, and "on many occasions," says Robertson, "their martial ideas made them forget the pacific spirit of their profession, and led them into the field in person at the head of their vassals, with fire, sword, and slaughter." All the kindred of the two combatants, down to the seventh degree of affinity, were *obliged, by legal authority,* to espouse the quarrel of their chieftain. The same obligation extended, also, of course, to vassals or tenants, as fighting for their lord was always considered one of the most essential conditions of all feudal tenures. Two full brothers were forbidden to engage in hostilities against each other—not from any sentiment of humanity, but because, both having the same kindred, neither had any persons bound to stand by him against the other in the contest; but two brothers of the half-blood might wage war, because each of them has a distinct kindred. The right of private war was professedly restricted to cases where some extreme wrong or insult had been committed: such crimes, in short, as are punished capitally in civilised nations. But, as a matter of fact, mere points of honour, and even questions of disputed property, often gave rise to such conflicts. The effects which followed from this monstrous custom were in the highest degree disastrous and appalling. "Nothing," says Robertson, "contributed more to increase those disorders in government, or to encourage that ferocity of manners which reduced the nations of Europe to the wretched state which distinguished the period of history during which they prevailed

Nothing was such an obstacle to the introduction of a regular administration of justice. Nothing could more effectually discourage industry, or retard the progress and cultivation of the arts of peace. Private wars were carried on with all the destructive rage which is to be dreaded from violent resentment, when armed with force and authorised by law. The invasion of the most barbarous enemy could not be more desolating to a country, or more fatal to its inhabitants, than those intestine wars. The contemporary historians described the excesses committed in prosecution of these quarrels in such terms as excite astonishment and horror."

Long and severe was the struggle before this pernicious practice gave way to the settled power of the magistrate. The first attempt that was made to regulate, if not to suppress it, was to fix a tariff of fines or composition to be paid for each crime, according to its presumed enormity; and Charlemagne enacted a law, that "if the injured person or his kindred should refuse to accept such composition, and presume to avenge themselves by force of arms, their lands and properties should be forfeited." But the force of custom was too strong even for the genius of Charlemagne, and after his death private wars became more frequent and ferocious than ever. The Church then took the matter in hand. Decrees of Councils were issued, exhorting men to desist from these disorders, and threatening those who disobeyed with exclusion from Christian privileges during life, and with the denial of Christian burial after death.

"But the authority of councils," says the historian, "how venerable soever in those ages, was not sufficient to abolish a custom which flattered the pride of the nobles and gratified their favourite passions." Recourse was then had to supernatural agency. During a time of great public calamity in France, a bishop of Aquitaine (A.D. 1032) declared that an angel had appeared to him, and brought him a writing from heaven, requiring men to abstain from fighting, and be reconciled to each other. Willing to do anything to avert the wrath of God, by which they thought themselves then smitten, the people for a time laid aside their animosities, and agreed, moreover, that for the future they would suspend their private hostilities during the great festivals of the Church, as well as from the evening of Thursday in each week to the morning of Monday in the following week, in honour of our Lord's passion and resurrection, which had taken place on the intervening days. This regulation gradually became a general law throughout Christendom, and was placed by solemn edicts of several popes and councils, under the sanction of the Church. The temporary respite from war thus secured was called *The Truce of God*, and if it had been rigidly observed, would have done much, no doubt, to abolish the barbarous practice against which it was levelled. By degrees, however, the violent spirit of those rude nobles broke through the hallowed restraint; so that the bishops, in order to recall them to the vows they had taken of ceasing from their private war, had often to enjoin their clergy to suspend the performance of divine

service within the parishes of the refractory delinquents.

Another attempt was made to call in the help of a revelation from heaven. Towards the end of the twelfth century, a carpenter in Guienne gave out that Jesus Christ and the blessed Virgin had appeared to him, commanding him to exhort mankind to peace, and giving him, as the visible seal of his mission, an image of the Virgin holding her Son in her arms, with this inscription—"*Lamb of God, who takest away the sins of the world, give us peace.*" This announcement seems for a time to have taken strong hold upon the minds of the ignorant and superstitious barons, and many of them took an oath not only to abstain from war themselves, but to enforce the same observance upon others, and formed an association for the purpose, under the name of the *Brotherhood of God.*

The evil, however, still continued, and became at last so flagrant as to oblige the sovereigns, in order to save society itself from dissolution, to exert to the utmost whatever authority they possessed against this insane passion. Various laws were passed by the kings of France, tending to bring under some regulation and restraint what they durst not attempt wholly to abolish. It was ordained that forty days should elapse between the commission of the alleged offence and the commencement of hostilities on the part of one chieftain against another. All private hostilities were positively interdicted while the king was engaged in war against the enemies of the state.

Bonds of assurance were exacted from the belligerents, binding them under heavy penalties to abstain from assaulting each other, either for a limited time or for ever. But it is a curious illustration of the tenacity with which the nobles clung to this brutal usage, that they entered into associations *to demand of their sovereign the repeal of laws* which trenched on the privileges of their order, among which the right of private war is always mentioned as the most valuable.* Still, as the royal authority increased, by the growth of cities and corporations, and a commercial middle class, forming a counter-weight to the insolent power of the nobility, the laws issued against private wars became bolder and more peremptory. In 1361, the last King John of France enacted an ordinance expressly forbidding them in the following words :—

"We order that all challenges and wars, and acts of violence against all persons in any part whatever of our kingdom, shall in future cease, and also all assemblies, convocations, and cavalcades of men-at-arms, or archers, and also all pillages, seizures of goods and persons without right, vengeances and counter-vengeances,—all these things we wish to forbid, under pain of incurring our indignation, and of being reputed and held disobedient and rebel."

At last a gleam of light seemed also to penetrate the skulls even of those stolid barons

* In the treaty between Philip Augustus and Richard Cœur de Lion (1194), the latter refused to admit the insertion of an article that none of the barons of either party should molest the other lest he should infringe the customs of Poitou and his other dominions: *in quibus consuetus erat ab antiquo, ut magnates causas proprias invicem gladiis allegarent.*—Hallam's "Middle Ages," vol. i., p. 207.

themselves, and the calamities they mutually inflicted by this system of "vengeances and counter-vengeances" became so intolerable, that they sometimes entered into voluntary associations binding themselves to refer all matters in dispute, whether concerning civil property or points of honour, to the determination of the majority of the associates. The power of courts of law also became greater, and especially that of royal courts, as distinguished from those which exercised only separate or territorial jurisdiction. Under the feudal system, the nobles, under pretence of their right to exercise authority over their own vassals, had gradually usurped the entire administration of justice both in civil and criminal cases within the limits of their own estates. They positively resisted all attempts of the royal judges to enter their territories, or in any way to interfere with their dependents. The result of this was not only to give them absolute power, without any appeal, over all within their own domains, but to place them, so far as their own conduct was concerned, virtually above law. By degrees, however, the princes encouraged the vassals of the barons, when complaining of the delay or refusal of justice in the local tribunals, or when disputing the equity of the sentence pronounced, to sue for redress by appealing to the royal courts. From this process there was but a step to making the barons themselves amenable to these superior courts, and in 1413 we find the authority of the latter so strong, that Charles VI. could venture to issue an ordinance, not only prohibiting private wars, but

giving power to the judge-ordinary to compel obedience by imprisoning the persons, and seizing the goods, of all who should prove contumacious and refractory.

In England the custom of private wars seems to have prevailed during the Saxon period very much as it did on the Continent. But after the Conquest, for reasons which it is not very easy to discover, the mention of them occurs more rarely in our history than in that of any other European country. Still traces of laws made to regulate or prevent the practice may be yet discovered later than that period in our ancient records. There is an instance of a pitched battle in the reign of Edward IV., at Nibley Green, Gloucestershire, on the 10th August, 1470, between two powerful nobles, William, Lord Berkley, and Thomas, Viscount Lisle. Both brought a large number of men into the field; a hundred and fifty men were killed in the action. After the battle, Lord Berkley repaired to the castle of Lord Lisle, at Wotton, and it was ransomed as a place taken in regular war.

Such is a brief history of the private wars which existed in Europe for many centuries, and which maintained their hold so long by mere dint of prejudice against the voice of reason, religion, humanity and law. But they yielded at last, slowly but surely, to the influence of juster sentiments concerning government, order, and public security. "How slow," says Robertson, at the end of the masterly sketch to which we are so much indebted for our materials for this paper,

" is the progress of reason and civil order! Regulations, which to us appear so equitable, obvious and simple, required the efforts of civil and ecclesiastical authority during several centuries to introduce and establish them." But what we wish particularly to impress upon our readers is this,—that these petty wars, upon which we now look back with mixed feelings of wonder and horror, as such undeniable relics of barbarism, differ absolutely in no one respect, except that they were on a smaller scale, from those international wars of which we are still accustomed to think and speak so complacently.

So far we have traced the gradual triumph of law over brute force, as illustrated first, in the entire abolition of the practice of Judicial Combat which once prevailed universally throughout Europe; and, secondly, in the no less entire abolition of the system of Private Wars, which for a long time was equally in the ascendant in nearly all those countries now called civilised and Christian. By the former, individual members of civil society were brought to submit their quarrels to judicial reference, in the place of deciding them by the right of the strongest. By the latter, clans, or bodies of persons acting under a common leader, were subjected to the same discipline, and made to acknowledge the authority of a supreme law, as a safer means of protecting their rights and redressing their wrongs, than an appeal to the wager of battle. Thus war,—that is, conflicts of brute force,—disappeared, first as regards individuals, and secondly as regards

districts or neighbourhoods; and the idea of a commonwealth began to be realised, that is a society of men fully reclaimed from what is called a state of nature, and organised into a civilised community, acknowledging the supremacy of LAW, and submitting to its decisions.

We now proceed to a third form of the evil which has retreated before the advance of civilisation. We refer to

PROVINCIAL WAR.

At first the communities above referred to were comparatively small, and, while relinquishing the right of war among the members of their own confederation, they still asserted and exercised that right as against other communities similarly constituted with their own. If we go back a few centuries, we shall find that all the great countries into which Europe is at present divided, instead of being, as they are now, occupied by one empire or kingdom, consisted of a large number of independent kingdoms, and even of separate nationalities, who had, or imagined they had, divers and antagonistic interests, and who watched each other as jealously, and fought as fiercely, and vowed against each other eternal enmity as emphatically as the larger bodies who now call themselves the nations of Europe are still in the habit of doing.

Let us first look at our own country when this island began to emerge out of barbarism. In the Anglo-Saxon period of our history we find that there existed, in what might be called England

Proper, seven distinct kingdoms, known as the Heptarchy. But the whole western portion of the island continued to be held by the Celtic race, and their territory was again divided into five kingdoms, namely, Cornwall, South Wales, North Wales, Cumberland, and Strathclwyd. Besides all which there were in Scotland at least two independent tribes more. And in what relations did these several communities live as regards each other? Why, in relations of mutual repulsion more vehement, and of strife more desperate and deadly, beyond all comparison, than those which exist now between the least congenial of the European nations.

"The island of Great Britain," says Sir James Mackintosh, referring to this period, "was then divided among fifteen petty chiefs, who waged fierce and unbroken war with each other. The ties of race were gradually loosened. The German invaders spilt their kindred blood as freely as that of the native Britons. The events of this period scarcely deserve to be known. The uniform succession of acts of treachery and cruelty ceases to interest human feelings. It wears out not only compassion but indignation. There are crimes enough in the happiest ages of the world to exercise historical justice; and it can scarcely be regretted that our scanty information relating to the earliest period of Saxon rule should leave it as dark as it is horrible." If any one had then predicted that this chaos of fiercely conflicting elements might and would be fused into one homogeneous and solid commonwealth, cohering

in the most perfect social unity, and obeying a common central authority, would it not have appeared a far more Utopian and improbable dream than that of a united Europe would be now? And yet that dream has long ago become a substantial historical reality. First, the seven Saxon kingdoms melted into each other and became one. The Celtic provinces of Cumberland and Strathclwyd were next incorporated, then Cornwall, and finally Wales itself, after many ages of intense national antipathy, which seemed to defy the possibility of amalgamation between the two races. How long and to what a comparatively recent period England and Scotland were in mortal feud is familiarly known to us all. But that also has passed away, and now all the inhabitants of Great Britain, from the North Foreland to Holyhead, and from the Land's End to the Pentland Firth, are one people, between any portion of which and another a war would be as impossible as it would be between Middlesex and Surrey. As for Ireland the process of assimilation has been going on under our own eyes, and is yet unhappily far from complete as a matter of feeling, however it may be as a matter of fact.

Let us now turn to see how the same tendency to centralisation has been at work in France, drawing floating masses of society into an ever-enlarging unity. If we go back only as far as the twelfth century we shall find that there existed only the merest nucleus of what we now call France. "The territory," says M. Guizot, "which Louis le Gros could really call his own comprised

only five of our present departments, namely, those of Seine, Seine-et-Oise, Seine-et-Marne, Oise, and Loiret." Anyone looking at a map of France may see what an utterly insignificant fragment that is of what now is comprised under the same designation. It is not necessary that we should trace minutely how province after province became gradually annexed to the central power, as by a law which resembles what in physical nature we call the attraction of gravitation. The first step towards this was the recognition of a supreme royalty, not only above all the feudal powers, but apart and different in kind from them, distinct from suzerainty, unconnected with territorial property, having a purely political character, with no other title or mission than government. "This right," says the great writer whom we have just cited, "was at first vague, and practically of small effect; the political unity of French royalty was not more real than the national unity of France, yet neither the one nor the other was absolutely chimerical. The inhabitants of Provence, of Languedoc, Aquitaine, Normandy, Marne, &c., had, it is true, special names, laws, destinies of their own; they were under the various appellations of Angevins, Manceaux, Normands, Provençaux, as *so many petty nations or states distinct from each other, often at war with each other.* Yet above all these various territories, above all these petty nations, there hovered a sole and single name, a general idea, the idea of a nation called the French, of a common country called France." But it was a long, a very long, time before this

idea became embodied in actual fact. It was not until the fifteenth century that there was anything like a real French nationality, and far later down than that we find traces of local jealousies, alienations, and conflicts.

By precisely the same process was Spain formed into national unity. "For several hundred years after the Saracenic invasion," says Prescott, "at the beginning of the eighth century, Spain was broken up into a number of small but independent States, divided in their interest, and often in deadly hostility with one another. It was inhabited by races the most dissimilar in their origin, religion, and government. By the middle of the fifteenth century, the number of States into which the country had been divided was reduced to four—Castile, Arragon, Navarre, and the Moorish Kingdom of Granada. At the close of that century these various races were blended into one great nation under one common rule." We have seen this national amalgamation accomplished, as respects Italy and Germany, under our own eyes during the present generation.

Now, there are some points connected with that process of unification we have attempted to trace, to which we would ask the special attention of our readers. In the first place, let it be observed that distinction of race has been no barrier to political assimilation. There is an immense amount of sentimental nonsense talked in these days about what is called the question of "nationalities." There are many who clamorously insist upon it that every collection of human beings that

has, what they call "ethnical distinctness," is entitled *ipso facto* to political separation and independence. How far back they would carry the application of their theory we know not. To be consistent they ought to go to the Deluge, or at least to the tower of Babel. For our own part we must avow our belief that the fewer nationalities there are the better. The progress of civilisation has been marked by the wider and wider absorption of these sectional distinctions which have divided the human race. There is no great country in Europe at this moment that does not consist of a number of absorbed and amalgamated nationalities. In England we have Celts, Saxons, Danes and Normans. In France, there are the Roman, the Goth, the Frank, and the Breton races. In Russia there are the Sclaves, Teutons, Finns and Tartars, besides many other races comprised in its Asiatic dominions. And so on in regard to other European countries. It must be admitted, moreover, that in no country in the world more than in our own have the ascendant races,—first the Saxon, then the Normans,—shown a more absolute contempt for the rights of nationality, or employed more ruthless means to suppress and extinguish them.

Perhaps it may be said that this amalgamation of races has been brought about by war, and could not have been effected by any other means. But this we wholly deny. War has not promoted, but prevented, or prorogued to a much more distant day, the union into which neighbouring races have otherwise a tendency to gravitate. Indeed

it is absurd on the face of it to say the contrary. How can a practice, the very essence of which is to alienate and divide, to excite the strongest antipathy and repulsion, to drive men away from all friendly contact with each other—how can this be the means of cementing and consolidating them into one? It would be as rational to assert that the explosive power of gunpowder is a good agent in the cohesion of material bodies, as that war is an instrument of union. The reason which leads men to maintain so strange a paradox is this: that often amalgamation ensues after long centuries of conflict. But those who ascribe this to the *influence* of war are only confounding the *post hoc* with the *propter hoc*. Amalgamation comes after war, simply because it would be impossible it should come during war, but the whole current of history proves that antagonistic races are confederated into unity, not by fighting, but by ceasing to fight. Sometimes, indeed, an attack from without may have served to promote or strengthen the internal concord of the nation or aggregate of nations thus assailed—just as we are told by the French historians that the invasion of France by the English, in the fourteenth and fifteenth centuries, "powerfully contributed to the formation of the French nation, by impelling it towards unity." But it does so exactly in the way we have indicated, by obliging the inhabitants to abstain from fighting or quarrelling among themselves, and by bringing them into closer relations of mutual sympathy and dependence. In the history of all countries it will be found

that it is precisely at the point where armed conflicts have ceased that real national unity has commenced, and that just in proportion as policy has been substituted for force, and justice for violence, has this unity become extended and confirmed. M. Guizot gives a striking illustration of this from the early history of France, even when the policy used was of a very low kind. He is contrasting the means of government adopted by Charles le Téméraire and Louis XI. "Charles," he says, "was the representative of the ancient form of governing; he proceeded by violence alone, he appealed incessantly to war, he was incapable of exercising patience, or of addressing himself to the minds of men, in order to make them instruments to his success. It was, on the contrary, the pleasure of Louis XI. to avoid the use of force, and take possession of men individually by conversation, and the skilful handling of interests and minds. He changed neither the institutions nor the external system, but only the secret proceedings, the tactics of power. It was left for modern times to attempt a still greater revolution, by labouring to introduce, alike into political means as into political ends, justice instead of selfishness, and publicity in place of lying fraud. It is not less true, however, that there was great indication of progress in renouncing the continual employment of force, in invoking chiefly intellectual superiority in governing through mind, and not through the ruin of existences."*

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* "History of Civilisation," i., p. 200.

If we look to the history of our own country, we shall find the same law abundantly exemplified. When was it that Wales and Scotland and Ireland became really component parts of a United Kingdom? Was it while they were engaged in incessant and bloody feuds with England, or while the latter attempted to coerce them into subjection by oppressive laws and the force of arms? So far otherwise, that during the whole long period over which that experiment of violence extended, there was no union, but endless distraction and a mutual sense of insecurity. It is only as England has laid aside her arms and sought to conciliate these outlying provinces by just laws and equal rights, that they have become parts of her, a source of strength to her instead of peril and weakness.

We have thus seen how, in course of time, the domain of Law has been continually enlarging, and banishing brute force further and further back in an ever-widening circle. First individuals have laid aside their arms, and submitted their differences to judicial reference. Then the feudal barons, with their large following of clients and vassals, acknowledged a similar jurisdiction, and were merged into one compact community. Then separate tribes of the same nation became merged into one. Then distinct nationalities, though aliens to each other in race, language, and religion, obeyed the same powerful law of assimilation. "Through all the re-partitions," says Mr. Cliff Leslie in an able article in *Macmillan's Magazine*, "which Europe has undergone since the fall of the empire of the Romans, the operation of one centripetal

law is visible in a perpetual effort towards the establishment of wider and firmer bases of civil society, and the composition of fewer and greater states and nations. Everywhere we now find names which are the genuine historical vestiges of the earlier groupings of mankind under petty independent or unconnected governments. Europe has already almost concentrated into a heptarchy or octarchy, or into fewer independent states than there were a few years ago in Italy alone. But if, in the place of—for example—say seven hundred states, there be only seven, it follows that only the difference of seven instead of seven hundred nations or governments can lead to war, and that all smaller feuds are brought under the cognisance of an impartial judge."

But is there any reason why the larger feuds also should not be "brought under the cognisance of an impartial judge"? We believe that the obstacles in the way of this consummation are far less formidable than those which have been already surmounted by the processes just described. The enmities now prevailing between any of the two great nations of Europe, are mild in comparison with those that once raged between the Saxons and Celts in this island, between the Franks and Goths in France, between the Sclaves and Tartars in Russia. On the other hand, the points of contact, the means of communication, the identities of interests, which exist between England and France, or even between England and Russia at this day, are beyond all comparison more numerous and more intimate than those which existed between

England and Wales, or between England and Scotland, only three or four centuries ago. Why should we, then, brand as dupes of an impracticable chimera those who believe in the possibility, and labour for the attainment, of a consummation which seems so entirely in harmony with a great Providential law, whose operation we have seen has been steadily advancing and enlarging through the ages?

We cannot forbear citing here a passage from the speech delivered by Victor Hugo, at the opening of the Paris Peace Congress in 1849 :—

"If four centuries ago, at the period when war was made by one district against the other, between cities and between provinces, some one had dared to predict to Lorraine, to Picardy, to Normandy, to Brittany, to Auvergne, to Provence, to Dauphiny, to Burgundy,—'A day shall come when you will no longer make wars—when it will no longer be said that the Normans are attacking the Picards, or the people of Lorraine are repulsing the Burgundians. . . . In that day you will have one common thought, common interest, a common destiny; you will embrace each other, and recognise each other as children of the same blood and of the same race; that day you will no longer be hostile tribes—you will be a people; you will no longer be Burgundy, Normandy, Brittany, or Provence—you will be France! you will no longer make appeals to war—you will do so to civilisation.' If, at the period I speak of, some one had uttered these words, all men of a serious and positive character, all prudent and cautious men, all the great politicians of the period, would have cried out, 'What a dreamer! What a fantastic dream! How little this pretended prophet is acquainted with the human heart! What ridiculous folly! What an absurd chimera!' Yet, gentlemen, time has gone on and on, and we find that this dream, this folly, this absurdity, has been realised! And I insist upon this, that the man who would have dared to utter so sublime a prophecy, would have been

pronounced a madman for having dared to pry into the designs of the Deity. Well, then, you at this moment say—and I say it with you—we who are assembled here, say to France, to England, to Prussia, to Austria, to Spain, to Italy, to Russia—we say to them, 'A day will come when from your hands also the arms you have grasped will fall. A day will come when war will appear as absurd and be as impossible between Paris and London, between St. Petersburg and Berlin, between Vienna and Turin, as it would be now between Rouen and Amiens, between Boston and Philadelphia. A day will come when you, France—you, Russia—you, Italy—you, England—you, Germany—all of you, nations of the Continent, will, without losing your distinctive qualities and your glorious individuality, be blended into a superior unity, and constitute an European fraternity, just as Normandy, Brittany, Burgundy, Lorraine, Alsace, have been blended into France. A day will come when the only battle-field will be the market open to commerce, and the mind opening to new ideas. A day will come when bullets and bomb-shells will be replaced by votes, by the universal suffrage of nations, by the venerable arbitration of a great Sovereign Senate, which will be to Europe what the Parliament is to England, what the Diet is to Germany, what the Legislative Assembly is to France."

But if this tendency to bring larger and still larger communities of men under the authority and protection of general law, is thus clearly traceable in all history, is there any harm, is it not, indeed, a clear duty, to employ all practicable means to facilitate and hasten this consummation as respects the great nations of Europe and the world? Some attempts in this direction have been already made, though in a very timid, hesitating and tentative manner. Nations have agreed to appeal to certain usages that have been established by common consent, as constituting what is called international law. But a nearer approach has

been made of late years to something like the recognition of a common law in regulating the relations of nations. The Declaration of Paris, for instance, on Maritime law, signed by the plenipotentiaries of Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, to which about forty other Powers have since given their adhesion, is more like an act of international legislation than anything that has taken place before. But if so many nations can agree in giving, as Lord Russell says, "permanence and fixity of principles to this part of the Law of Nations," why should it be thought impossible that they should in like manner agree on many other points which remain unsettled, and so by degrees form something like a Code of international law?

Of great significance and importance also was the resolution unanimously adopted by the representatives of the Great Powers on the same occasion, to which subsequently nearly all the other civilised Governments adhered, expressing the wish that in case of any misunderstanding arising between States recourse should be had, before appealing to arms, to the good offices of a friendly Power. There was here a distinct recognition of the principle that it is both desirable and practicable to employ another umpire than that of force in deciding the differences of States. Many instances also happily exist in which this principle has been applied with perfect success.

And what was the tribunal which has recently met at Geneva to adjudicate on the matters in

dispute between Great Britain and the United States, but a Court of Nations in miniature? It had all the essential attributes of a Court. It was presided over by judges of high character, and so chosen as to place their independence and impartiality above suspicion. The two parties who agreed to submit their differences to its judgment, appeared in Court represented by their respective counsels, who produced their evidence and pleaded for their clients, as in other courts. And President Grant in his message soon after said most truly that an example has thus been set which may be followed by other civilised nations, and be finally the means of returning to productive industry millions of men now maintained to settle the disputes of nations by the bayonet and the broadsword.

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